

Message Text

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ACTION NEA-10

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E..9. 11652: N/A

TAGS: PINT, IN

SUBJECT: SUPREME COURT TO REVIEW "BASIC STRUCTURE" THEORY

1. AN OCTOBER 20 PTI REPORT INFORMS THAT ON NOVEMBER 10 THE SUPREME COURT WILL BEGIN HEARINGS ON THE COURT'S 1973 DECISION THAT THE PARLIAMENT CANNOT AMEND AWAY THE "BASIC STRUCTURE" OF THE CONSTITUTION. THE REPORT STATED THAT SOME 75 WRIT PETITIONS PENDING BEFORE THE COURT RELATING TO NATIONALIZATION OF INDUSTRIES AND PAYMENT OF COMPENSATION NECESSITATE THE REVIEW. THE WRITS, SOME DATING BACK TO 1971, CHALLENGE VARIOUS GOVERNMENT LEGISLATION AND IMPLEMENTORY ACTIONS AS VIOLATIVE OF THE BASIC STRUCTURE OF THE CONSTITUTION. ACCORDING TO THE PTI STORY, THE GOI'S ATTORNEY GENERAL AND SOLICITOR GENERAL HAVE CHALLENGED THE 1973 DECISION AND ASKED FOR A NEW RULING. THE COURT'S DECISION TO REVIEW ITS 1973 POSITION COULD BUT PROBABLY WILL NOT INTERFERE WITH AN EARLY RULING ON MRS. GANDHI'S COURT CASE (SEE NEW DELHI 13621 ON LIKELY ALTERNATIVES THE COURT MAY ADOPT IN DECIDING THE PRIME MINISTER'S COURT CASE.)

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2. IN 1973, THE COURT DECIDED BY A VOTE OF 7-6 THAT

PARLIAMENT'S AMENDING POWER DOES NOT EXTEND TO THE BASIC STRUCTURE OF THE CONSTITUTION. ONLY ONE OF THE JUSTICES VOTING FOR THE RESTRICTION IN 1973, KANNA, REMAINS ON THE SUPREME COURT. FOUR OF THE JUSTICES WHO VOTED AGAINST THE RESTRICTION - RAY, BEG, MATTHEW AND CHANDRACHUD - ARE ON THE COURT TODAY. THESE FIVE JUSTICES ARE HEARING MRS. GANDHI'S COURT CASE. THE REMAINING JUSTICES ON THE COURT WERE APPOINTED SUBSEQUENT TO THE 1973 DECISION.

3. AS THE DEPARTMENT WILL NOTE, THE ADAM CLYMER OCTOBER 20 BALTIMORE SUN ARTICLE REPORTING THAT THE PRESENT FIVE MAN BENCH HEARING MRS. GANDHI HAS REQUESTED A FULL THIRTEEN MAN BENCH TO HEAR MRS. GANDHI'S CASE IS NOT CORRECT. THE COURT'S DECISION TO REVIEW ITS 1973 DECISION WAS PRECIPITATED BY THE WRIT PETITIONS MENTIONED IN PARAGRAPH 1. WE UNDERSTAND FROM LAWYER INVOLVED IN PETITIONS THAT COURT HAS ALLOWED ONLY FIVE DAYS FOR ORAL PRESENTATIONS ON ALL 75 PETITIONS. LAWYERS ARE UP IN ARMS OVER BRIEF TIME ALLOCATED AND BELIEVE THIS SUGGESTS COURT ANTICIPATES OVERTURNING 1973 DECISION - A MOVE WHICH WOULD GREATLY STRENGTHEN THE PRIME MINISTER'S HAND IN PARLIAMENT.
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